

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

AKIN AND PORTER PRODUCE, INC.
Respondent

Case Nos.: I-00-11077
I-00-11241

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701, *et seq.*) and Title 20, Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction 00- 11077 served on May 18, 2001, the Government charged Respondent Akin & Porter Produce, Inc. with a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notice of Infraction alleged that the infraction occurred in the 300 block of Morse Street, N.E. on May 10, 2001, and sought a fine of \$500.00.

Respondent failed to respond to the Notice of Infraction within twenty (20) days of service (fifteen days plus five days for mailing pursuant to D.C. Code §§ 6-2712(e), 6-2715). Accordingly, on June 19, 2001, this administrative court issued an order finding Respondent in default, assessing a statutory penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A), and

requiring the Government to issue a second Notice of Infraction in accordance with D.C. Code § 6-2712(f). The Government issued a second Notice of Infraction 00-11241 on July 2, 2001.

Prior to the Government's issuance of the second Notice of Infraction, this administrative court received a submission from Respondent on June 27, 2001. This submission consisted of the following documents: (1) a June 2, 2001 letter of explanation from Respondent, along with a request for a reduction or a suspension of the fines. This letter had not been received by this administrative court prior to June 27, 2001¹; (2) a June 27, 2001 letter from Respondent referencing the June 2, 2001 letter and indicating that, although it had forwarded the June 2, 2001 letter to this administrative court by regular mail, "evidently you have not received it"; and (3) a check (#037378) in the amount of \$500.00 specified as being "for the fine."

On July 3, 2001, this administrative court issued an order permitting the Government to reply to Respondent's submission within ten calendar (10) days of the order's service date. Because no response from the Government has been received within the allotted time, this matter is now ripe for adjudication.

¹ In its June 2, 2001 letter, Respondent stated that, because it is based in Tennessee, it was not aware of the 20 DCMR 900.1. Respondent further stated that it has now advised its drivers of the law and "will abide to it in the future." Finally, Respondent stated: "Since we were not aware of the law, we humbly ask you not fine our company for this first infraction. Please consider this in your decision."

II. Findings of Fact

1. Respondent has admitted violating 20 DCMR 900.1 on May 10, 2001 in the 300 block of Morse Street, N.E.
2. On May 10, 2001, Respondent idled its engine for more than three (3) minutes while parked in the 300 block of Morse Street, N.E.
3. On or about June 2, 2001, Respondent mailed a letter of explanation to this administrative court, along with a request for a reduction or suspension of the fine.² In that letter, Respondent stated that, being based in Tennessee, it was not aware of the provisions of 20 DCMR 900.1. Respondent further stated that it had made its drivers aware of the law and would comply with it in the future.
4. On June 27, 2001 this administrative court received a letter from Respondent referencing the June 2, 2001 letter (and enclosing it as an attachment), enclosing a \$500.00 check (#037378) for the fine, and requesting a suspension or reduction in the assessed statutory penalty. Respondent used an express courier service to deliver the June 27, 2001 submission to this administrative court.
5. Respondent's June 2, 2001 letter was not independently received by this administrative court, but was only received as an attachment to Respondent's June 27, 2001 submission.

² Because the first Notice of Infraction 00-11077 was certified by the Government as being served by mail on May 18, 2001, Respondent's June 2, 2001 answer and plea would have been timely if received by this administrative court on or before June 7, 2001. *See* D.C. Code §§ 6-2712(e); 6-2715.

III. Conclusions of Law

1. I construe Respondent's June 27, 2001 submission as an untimely plea of Admit as to the fine, along with a request for a reduction or suspension of any assessed statutory penalty. *See* D.C. Code 6-2712(b).
2. On May 10, 2001, Respondent violated 20 DCMR 900.1 in the 300 block of Morse Street, N.E. on May 10, 2001. A fine of \$500.00 is authorized for that violation which Respondent has paid in full. *See* 16 DCMR 3224.3(aaa).
3. Respondent has also requested a reduction or suspension of the assessed statutory penalty. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of infraction within the established time limits, the respondent shall be liable for a penalty equal to the applicable fine. D.C. Code § 6-2704(a)(2)(A).
4. Based on this record, Respondent has not established good cause for failing to timely respond to the Notice of Infraction. In responding to a Notice of Infraction, the law places the burden of ensuring the timely receipt of a respondent's plea on the respondent. D.C. Code § 6-2712(e). While the use of regular mail may well be an adequate method to ensure the timely receipt of a plea in the majority of cases, there are circumstances that may dictate that other forms of delivery sometimes be utilized.³ Respondent itself recognized this by using an express courier service to

³ For example, in this case, Respondent waited until June 2, 2001 -- the 15th day of the Government's service of Notice of Infraction 00-11077 -- to prepare and submit its plea to this administrative court by regular mail. Moreover, June 2, 2001 was a Saturday. As a result, it is unlikely that Respondent's submission would have been even preliminarily processed by the United States Postal Service before Monday, June 4, 2001 at the earliest. Given that Respondent's plea was due on or before June 7, 2001 (*see, infra*, note 2), a method of delivery other than regular mail may have been more appropriate under these circumstances to ensure Respondent's plea was timely received by this administrative court.

- deliver its June 27, 2001 submission to this administrative court instead of using regular mail as it had for its June 2, 2001 submission. This is not to say that, in responding to a Notice of Infraction, respondents must always incur the expense of using an express courier service. Rather, considering the totality of circumstances, a respondents should avail themselves of a delivery method whose dependability is inversely proportional to the risk of exposure they are willing to face in the event their papers are not timely received by this administrative court.
5. Under the facts of this case, I conclude that a modest reduction, although not a suspension, of the penalty is appropriate. I credit Respondent's good faith, albeit unsuccessful, attempt to comply with the filing requirement of D.C. Code § 6-2712(f). Accordingly, the fine will be reduced from \$500.00 to \$400.00.

IV. ORDER

It is, therefore, upon the entire record in this matter, this ____ day of _____,
2001:

ORDERED, that Notice of Infraction 00-11241 is hereby **DISMISSED AS MOOT**; and
it is further

ORDERED, that Respondent shall pay a total of **FOUR HUNDRED DOLLARS (\$400.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ 9/4/01

Mark D. Poindexter
Administrative Judge